

TAIWAN

In 1998, the United States trade deficit with Taiwan reached \$15.0 billion, up \$2.7 billion from 1997. U.S. exports to Taiwan in 1998 were \$18.2 billion, down 10.9 percent from the same period the previous year. Taiwan was the 7th largest export market for the United States in 1997. Corresponding U.S. imports from Taiwan were \$33.1 billion, up 1.5 percent. The stock of U.S. foreign direct investment (FDI) in Taiwan in 1997 was \$4.9 billion, an increase of 6.6 percent from 1996. U.S. FDI in Taiwan is concentrated largely in the manufacturing, banking, and wholesale sectors.

Overview

Market access in Taiwan was significantly improved when the United States and Taiwan reached agreement in February 1998 on the market access elements of Taiwan's WTO accession package. The agreement includes both immediate market access and phased-in commitments, and will provide substantially increased access for U.S. goods, services, and agricultural exports to Taiwan. For example, the agreement permits imports from the United States of previously-banned pork, chicken, and variety meat products. It also provides improved access to the automobile, telecom, government procurement, beer, spirits, and wine markets.

Despite progress in these and other areas, however, significant trade issues with Taiwan remain, as described in the following paragraphs.

IMPORT POLICIES

Tariffs

Many agricultural tariffs were cut as part of Taiwan's 1995 unilateral tariff reductions. U.S. exporters nevertheless consider that many of the tariff reductions were not deep enough to have real commercial effect, and that the present tariff structure on these items, as well as other agricultural tariffs, continue to be a significant barrier to exports. Some examples include: fresh fruits (40-50 percent tariff), processed vegetables, including vegetable juices (35-40 percent), and sunflower seeds and oil (11-15 percent). However, many of these tariffs will be lowered in the context of Taiwan's WTO accession.

In addition, United States agricultural exporters continue to report instances in which the customs authorities on Taiwan have reclassified import items to lines with higher tariffs, often after years of trade history. This practice is most prominent in agricultural commodities, such as mixed feed stuffs, tallow and grease, and intermediate ingredients. Such a practice negates some of Taiwan's tariff cuts.

In May, 1998, Taiwan began implementing tariff cuts on 1,130 items, many of specific interest to U.S. industry, such as buses, agricultural products, including fruits and vegetables, and camera film. Tariff reductions on 15 agricultural products, negotiated as part of the U.S.-Taiwan bilateral WTO agreement, took effect in July 1998. An additional 777 items are slated for tariff cuts shortly. Taiwan's current average nominal tariff rate is 8.3 percent; the trade-weighted rate is 3.2 percent.

Taiwan is a participant in the Information Technology Agreement (ITA). Under the ITA, Taiwan has agreed to phase out tariffs on information technology products. The first tranche of ITA-related cuts was

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implemented on a temporary basis on July 1, 1997 under administrative order. A second tranche of cuts went into effect on January 1, 1998. While the vast majority of tariffs on these products will be phased out by the year 2000, for some products reductions will not be completed until 2002. The administrative order will have to be renewed annually until Taiwan enacts permanent reductions in connection with its accession to the WTO.

Licensing and Other Restrictions

Of some 10,200 import product categories in Taiwan, around 990 still require approval from relevant authorities, and another 278 require import permits from the Board of Foreign Trade or pro forma notarization by banks. 264 items are banned, and may not be imported without special permission from the Taiwan authorities. Included in this category are agricultural items that can only be imported pending the agricultural authorities' prior approval. This amounts to a de facto ban on imports of many of these products since import approval is normally not granted. Quarantine requirements, which are often overly stringent and not based on sound science, also block imports of certain plant and animal products. Items under de facto bans include chicken (fresh and frozen), certain cuts of pork, peanuts, and adzuki beans. Rice and rice products are considered to be exceptional items requiring approval from Taiwan's Provincial Food Bureau. Imports of animal offal (beef, pork, and poultry), sugar, and selected dairy products are banned. However, Taiwan has agreed to remove these bans upon accession to the WTO. Moreover, under the U.S.-Taiwan WTO market access agreement reached in February 1998, limited market access for U.S. chicken, pork, and variety meat products is provided under a system of annual quotas. However, subsequent to the implementation of these quotas, Taiwan authorities used reclassification in order to ban or limit importation of two pork products. As a result of product reclassification, frozen bacon imports are now banned, and some pork bone product imports are limited by quotas. Both of these products could be imported in unrestricted quantities prior to reclassification.

In addition to these restrictions on agricultural items, the Council of Agriculture also implements what amounts to a de facto ban on the importation of fishing boats (including sport fishing boats), which has frustrated the export efforts of several U.S. firms. Motorcycles with engines larger than 150cc likewise require a special permit and are thus effectively banned from importation. For some products where licenses are required, the importer may be required first to obtain the authorization of numerous agencies such as Taiwan's Department of Health (DOH) for medical equipment, the Board of Foreign Trade or the Provincial Department of Agriculture and Forestry for certain fertilizers, and the Department of Environmental Protection for waste and scrap copper, aluminum, lead, and zinc. Often these additional approvals and documentary requirements add to the administrative burdens of importing the products into Taiwan or make importation effectively impossible for small exporters without the appropriate connections with the relevant authorities. Local content requirements in the automobile and motorcycle industries will be lifted as part of Taiwan's WTO accession.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Industrial products (such as air-conditioning and refrigeration equipment) are required to undergo testing to verify energy efficiency and capacity before clearing customs. Recent efforts to enforce compliance of some imported products with Taiwan standards have resulted in long delays at customs for some U.S. products entering the market, as testing facilities are inadequate and testing procedures slow and inefficient.

The most prevalent restrictive standards and testing requirements exist for agricultural goods. Taiwan's lack of an internationally-based set of pesticide tolerance levels for imported fruits and vegetables sometimes impedes

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trade in these products. In addition, imported agricultural goods are routinely tested while domestic products are not as closely monitored or tested. Similarly, stringent chemical residue testing of imported food products, such as turkey, pork, and game meat, limits imports. Taiwan often fails to notify its trading partners of changes in sanitary and phytosanitary (SPS) import regulations, despite pledges to abide by international norms as embodied in the WTO Agreement on Application of SPS Measures. Standards on preservatives for soft drinks preclude the import of certain beverages.

Registration and approval procedures for imports of pharmaceuticals, medical devices, and cosmetics are both complex and time consuming, and have been the subject of long-standing complaints by United States firms. Foreign medical device manufacturers must re-register second or third generation versions of previously approved products, and the Taiwan Department of Health also requires the registration of individual products instead of entire product lines.

For all but new chemical entities, pharmaceutical companies are still not allowed to import drugs which are produced using multi-site sourcing. Moreover, pharmaceutical companies claim that clinical trial requirements in Taiwan for drugs that have been approved in other major markets add 2-3 years to the approval time. In 1998, however, Taiwan authorities began a two-year phase-out of clinical trials as part of the registration process for new drugs. This initiative, once fully implemented, will significantly reduce regulatory burdens on pharmaceutical firms.

Lastly, Department of Health authorities continue to require the submission of detailed plant master files (PMF) as part of the registration and approval process for new drugs. United States industry has called for submission of United States FDA Establishment Inspection Reports, ISO-13485 certificates, and free sales certificates as a means to satisfy the PMF requirement. This would bring the PMF compliance for new drugs into line with Taiwan's new PMF requirement for U.S.-made medical devices.

Other trade barriers facing U.S. pharmaceutical and medical device makers are detailed below under "Other Barriers."

In 1997, the Taiwan authorities promulgated new electromagnetic compatibility (EMC) standards for computer and other electronic goods. Bilateral discussions led to a grace period prior to implementation of the new rules, allowing affected U.S. firms to comply without a disruption of U.S. computer exports to Taiwan. In October, 1998, the U.S. and Taiwan initialled an agreement under which Taiwan and the United States will mutually recognize EMC testing and certification by accredited labs, subsequent to a two-year confidence-building period. Implementation awaits approval by Taiwan's Cabinet.

GOVERNMENT PROCUREMENT

Problems encountered by U.S. firms in performing contracts in Taiwan are serious and constitute significant trade barriers. Despite recent reforms, access to Taiwan's estimated \$10 billion annual public construction market remains problematic. Municipal governments in particular have been notably arbitrary in dealing with foreign contractors. The most common pattern of difficulty consists of frequent and unreasonable change orders introduced during performance of the contract. Performance bonds are forfeited and contracts canceled when foreign construction companies are unwilling to accommodate substantially increased costs within the originally agreed payment. Lack of timely and effective arbitration procedures prevent satisfactory resolution of contract disputes. Some major international contractors will no longer undertake significant contracts in Taiwan.

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U.S. industry has also been hindered in bidding on major projects by non-transparent procurement procedures, which include the use of invisible ceiling prices on bid tenders and unlimited potential damages and contingent liability requirements which are inconsistent with international practices. Other problems include: expensive bond requirements, short lead times on major tenders, non-transparent and lengthy warranty provisions, unclear payment schedules, and pre-qualification requirements which limit experience to similar projects in Taiwan and disqualify related overseas experience. Additional limitations include a requirement that foreign firms have a local construction license or else establish a local subsidiary in order to bid on public projects. Possible exceptions to current laws involve construction services requiring new technology or cases where foreign firms provide consulting and other services.

In connection with its accession to the WTO, Taiwan has agreed to join the Agreement on Government Procurement (GPA). Adherence to the GPA's procedures should improve the transparency of the bid process on major government procurement contracts. In addition, Taiwan has agreed to new dispute settlement procedures on major government contracts. A new Government Procurement Law was passed and promulgated in mid-1998, marking an important step towards open, fair competition in Taiwan's market for public procurement projects. The new law is being implemented and enforced by a reorganized body, the Government Procurement and Public Construction Commission.

EXPORT SUBSIDIES

Taiwan provides an array of direct and indirect subsidy programs to farmers, ranging from financial assistance to guaranteed purchase prices higher than world prices. It also provides incentives to industrial firms in export processing zones and to firms in designated "emerging industries." Some of these programs may have the effect of subsidizing exports. Taiwan is currently in the process of notifying the WTO of these programs, and as part of its WTO accession, it may be required to amend or abolish any subsidy programs deemed inconsistent with WTO principles.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Citing persistent enforcement problems, the United States put Taiwan back on the Special 301 Watchlist in August, 1998. Although Taiwan has enacted laws designed to improve intellectual property protection, enforcement of those laws remains problematic. The United States is particularly concerned about inadequate enforcement efforts in the face of continued production and export of counterfeit U.S. software and video games to the United States and third countries. In 1998, Taiwan was the second largest source of counterfeit goods seized by U.S. Customs.

A key problem in Taiwan's IPR enforcement is its weak judicial system. Taiwan judges are often inadequately trained in IPR issues, and, in the past, made a variety of questionable procedural decisions to avoid taking action on the merits in copyrights infringement cases.

U.S. software publishers are also harmed by the production and sale in Taiwan of "compilation" recordable CDs. These CDs, which buyers can have loaded with a selection of software off of a menu, can contain thousands of dollars of illegal software but cost only a few dollars. The U.S. software industry is attempting to work with Taiwan authorities to put in place enforcement programs to deal with this problem.

Owners of U.S. patents and trademarks have experienced difficulty in obtaining and enforcing rights in Taiwan. The general lack of transparency and predictability in the system for obtaining trademarks is a

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continuing problem. In addition, some U.S. patent and trademark owners are concerned that Taiwan authorities are either permitting or acquiescing in abuses of Taiwan's patent law which impede or prevent foreign right owners from enforcing their patent rights.

Another area of concern is the lack of adequate protection for the packaging, configuration, and outward appearance of products, an area of IPR known as "trade dress." Despite provisions in Taiwan's Fair Trade Law designed to protect unregistered marks and other packaging features, copying of U.S. products by local products which are misleading in appearance remains a problem. U.S. firms have made numerous complaints.

SERVICES BARRIERS

Financial Services

Inward/outward remittances unrelated to trade by individuals or companies are still subject to annual limits. New Taiwan Dollar (NTD) derivative contracts may not exceed one-third of a bank's foreign exchange position. To stabilize the foreign exchange market in the wake of regional financial turmoil, Taiwan's Central Bank of China closed the non-deliverable forward (NDF) market to domestic corporations in May 1998; the NDF market remains open to foreign companies.

In May 1997, the financial authorities announced that in principle insurance companies would be allowed to set some premium rates and policy clauses without prior approval from regulators. Insurance companies are still required to report such rates and clauses. In July 1995, Taiwan removed a prohibition against mutual insurance companies; as of late 1998, however, authorities had not issued implementing regulations.

Legal Services

Foreign lawyers may not operate legal practices in Taiwan, but may set up consulting firms or work with local law firms. Qualified foreign attorneys may, as consultants to Taiwan law firms, provide legal advice to their employers only. In preparation for its accession to the WTO, legislation was passed in May to clarify the status and scope of work for foreign-licensed attorneys, and also to permit the eventual establishment of foreign legal partnerships. However, last minute changes to the law failed to achieve this purpose, and call into question the legality of existing arrangements made between foreign and local attorneys. Taiwan authorities have pledged to remedy these inconsistencies and, for now, the new law, like many others linked to the accession process, is not being implemented.

Films

While restrictions have been eased recently, Taiwan continues to limit the importation and showing of foreign films. Only 50 film prints per title are allowed to be imported. The number of theaters in any municipality allowed to show the same foreign film simultaneously is limited to 18. Taiwan has pledged to abolish these restrictions upon accession to the WTO.

INVESTMENT BARRIERS

While Taiwan continues to liberalize its financial sector, limits remain on foreign ownership in listed companies. For qualified foreign institutional investors, restrictions on capital flows have been removed,

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although they are still subject to limits on portfolio investment. Foreign individual investors are subject to some limits on their portfolio investment and restrictions on their capital flows.

Taiwan continues to relax investment restrictions in a host of areas, but foreign investment remains prohibited in key industries such as agriculture, basic wire line telecommunications, broadcasting, and liquor and cigarette production. Wire line telecommunications will be gradually liberalized beginning in 1999, and will be completely liberalized by July 2001 under Taiwan's WTO accession commitments. Liquor and cigarette production will be fully liberalized by 2004. Foreign ownership in airlines is limited to 33 percent, but this ceiling may be raised to 50 percent under pending legislation.

ANTICOMPETITIVE PRACTICES

In the cable TV market, concerns are growing that the island's two dominant multi-system operators (MSOs) are colluding to inhibit fair competition. Control by the two MSOs of upstream program distribution is making it increasingly difficult for U.S. providers of popular channels to negotiate reasonable fees for their programs. Concerned Taiwan authorities are aware of collusive practices in the cable TV market, but have thus far taken only limited steps to address the problem.

ELECTRONIC COMMERCE

Taiwan supports international efforts to facilitate global e-commerce, and recently unveiled e-commerce policy guidelines which emphasize the primacy of the private sector in e-commerce development. In practice, however, Taiwan's approach to e-commerce and related issues is less clear. At the end of 1998, for example, central authorities had proposed an amendment to the Taiwan Telecom Law which could, depending upon implementation, require an intrusive and time-consuming inspection and approval system for all hardware and software encryption modules. U.S. industry opposes the amendment on the grounds that such a system is contrary to international norms. Moreover, in practice, such an inspection regime could adversely affect an estimated \$30 million in annual computer software and hardware exports from the United States.

OTHER BARRIERS

Market access for U.S.-made medical devices and pharmaceuticals has been one of the most contentious trade issues between the United States and Taiwan over the last two years. Taiwan has declared both the medical device and pharmaceutical sectors as areas warranting priority for development. Favorable measures have been introduced by Taiwan agencies to promote growth and technological development in these areas.

Taiwan does not discriminate against imported devices and drugs per se. However, Taiwan's national health insurance system acts effectively as the exclusive buyer for all medical products and services in Taiwan. As such, Taiwan authorities set prices for all drugs and medical devices on a de facto basis. It is this pricing system which frequently has the effect of discriminating against typically higher quality and higher priced pharmaceuticals and medical devices imported from the United States by limiting the reimbursement amount for certain products. Other regulatory barriers to medical device and drug imports are discussed in detail earlier in this report under "Standards, Testing, Labeling, and Certification".

Medical Devices: The Taiwan market has been an important one for the U.S. medical device industry. Taiwan is the third largest emerging market in Asia for U.S. medical device industry exports. Through the middle of the 1998, U.S. medical device industry exports to Taiwan were approximately \$207 million, according the

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Health Industry Manufacturers Association (HIMA). HIMA estimates the total market in medical technologies in Taiwan to be around \$900 million. While U.S. device exports were growing by 11 percent through the middle of 1998, HIMA believes discriminatory practices now threaten about two-thirds of U.S. exports, as well as prospects for substantial growth. Future losses could be in the range of \$100 million annually, according to HIMA.

In 1996, the United States and Taiwan concluded an agreement on medical device pricing with specific measures to be achieved regarding national treatment, transparency, openness, predictability, and functionality. Taiwan has thus far not taken adequate measures to establish differentiated pricing for devices based on the relative value to technology (the "functionality" measure). Significant differences exist between the functionality of imported products and those made in Taiwan.

In December 1997, Taiwan's National Health Insurance Bureau (NHIB) introduced a diagnostic-related group case payment system for medical device products. This system assigns "generic" pricing, counter to the principle of creating value-based pricing for devices as stated in the agreement. This unexpected change in reimbursement systems was accompanied by drastic price cuts for foreign manufactured orthopedic products to levels nearly identical to those for domestically produced orthopedic products, thus eliminating the distinction between products based on quality and relative value.

The change to generic rather than quality pricing for medical devices threatens to reduce dramatically the market for advanced foreign medical device products, at the same time that it provides ample profits to local Taiwan companies for development of more advanced medical devices. The United States is requesting that Taiwan adopt special measures that will recognize the value of the technology embodied in U.S. and other foreign medical devices -- especially in orthopedic knee and hip implants.

Pharmaceuticals: The U.S. pharmaceutical industry faces price controls similar to those encountered by U.S. medical device manufacturers. Under Taiwan's pricing system, producers of "generic" pharmaceuticals are reimbursed at a set percentage of the price set for the equivalent proprietary drugs. This system discriminates against patented and brand-name pharmaceuticals that are typically imported by providing a higher rate of return on "generic" products that are produced in Taiwan. Since Taiwan producers do not have to pay for research, development and testing (but are entitled to a high price), they can offer "unofficial" discounts on their products and thereby enjoy a significant price advantage over brand-name competitors when bidding on procurement contracts. Although Taiwan authorities have eliminated situations where generic drugs receive the same price as higher quality patented pharmaceuticals, U.S. companies remain concerned that in some cases, price differentials between generic and name brand products remain overly narrow.

During 1998, the Taiwan Department of Health promulgated a no-fault compensation scheme for patients who suffer from adverse drug reactions. While theoretically voluntary, the scheme has built-in incentives which would put non-participating companies at a competitive disadvantage in the marketplace. The scheme requires a contribution of 0.1% of sales revenue from participating firms. U.S. firms claim this duplicates existing expenses for product liability insurance.

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